

EXECUTIVE SECRETARIAT
ROUTING SLIP

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS				
5	DDI				
6	DDA				
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC				
11	IG				
12	Compt				
13	D/OLL				
14	D/PAO				
15	D/PERS				
16	VC/NIC				
17	NIO/ECON	X			
18	D/ALA/DI		X		
19	D/OGI/DI		X		
20	D/ExecStaff		X		
21					
22					
		SUSPENSE _____ Date			

Remarks

Executive Secretary
18 Dec '86

Date

CONFIDENTIAL**THE WHITE HOUSE
WASHINGTON**

Attachment

Executive Registry

CABINET AFFAIRS STAFFING MEMORANDUM

86-5894X

Date: 12/17/86 **Number:** 317,252 **Due By:** ----

Subject: Economic Policy Council Meeting - December 18, 1986

11:00 A.M. Roosevelt Room

ALL CABINET MEMBERS	Action	FYI		Action	FYI
Vice President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CEA	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CEQ	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input checked="" type="checkbox"/>	<input type="checkbox"/>	OSTP	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Justice	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Labor	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HHS	<input type="checkbox"/>	<input type="checkbox"/>	Poindexter Keel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HUD	<input type="checkbox"/>	<input type="checkbox"/>	Svahn Hobbs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Chew (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Energy	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Chief of Staff	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
<u>CIA</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
EPA	<input type="checkbox"/>	<input type="checkbox"/>	Executive Secretary for:		
GSA	<input type="checkbox"/>	<input type="checkbox"/>	DPC	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NASA	<input type="checkbox"/>	<input type="checkbox"/>	EPC	<input checked="" type="checkbox"/>	<input type="checkbox"/>
OPM	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
SBA	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
VA	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

The Economic Policy Council will meet on Thursday, December 18, 1986 at 11:00 A.M. in the Roosevelt Room.

The agenda and a background paper on Brazil Informatics Section 301 Case is attached for your review.

RETURN TO:

☒ Alfred H. Kingon
Cabinet Secretary
456-2823
(Ground Floor, West Wing)

☐ Don Clarey
☐ Rick Davis
☐ Ed Stucky

Associate Director
Office of Cabinet Affairs
456-2800 (Room 235, OE08)

THE WHITE HOUSE
WASHINGTON

December 17, 1986

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM: EUGENE J. McALLISTER *EM*

SUBJECT: Agenda and Papers for the December 18 Meeting

The agenda and paper for the December 18 meeting of the Economic Policy Council are attached. The meeting is scheduled for 11:00 a.m. in the Roosevelt Room.

The first agenda item will be a discussion of the Brazilian informatics case. We face a December 31 deadline on this issue. A paper from USTR outlining various options is attached.

The second agenda item will be a discussion of the EC Enlargement issue, on which we also face a December 31 deadline. No paper will be distributed on this item.

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ECONOMIC POLICY COUNCIL

December 18, 1986

11:00 a.m.

Roosevelt Room

AGENDA

1. Brazilian Informatics
2. EC Enlargement

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THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

December 17, 1986

MEMORANDUM TO THE ECONOMIC POLICY COUNCIL

FROM: Clayton Yeutter 
SUBJECT: Brazil Informatics Section 301 Case

ISSUE

On October 6, 1986, the President determined under Section 301 that Brazilian acts, policies and practices with regard to informatics products are unreasonable and burden or restrict U.S. commerce. He deferred a decision about final action until December 31, to allow time for further consultations and monitoring of the commitments made by Brazil.

The EPC must now review the results of our consultations with Brazil and recommend appropriate action to the President. This memorandum describes recent developments and various options for Presidential action. (A memorandum describing the background of the case is attached at Tab 1.)

RECENT DEVELOPMENTS

On investment, Brazil has indicated it will favorably consider joint venture proposals on a case-by-case basis. However, Brazil's "track record" for project approvals to date is inconclusive. Several joint venture proposals may be submitted for approval early next year.

On intellectual property protection, on December 9 President Sarney sent to his Congress legislation on intellectual property protection for computer software. The Congress is now in recess; action on the bill will not begin prior to February 1987. U.S. government and industry copyright experts believe the bill is unacceptable; it does not provide adequate protection for software, appears to require compulsory licensing and registration, and extends the Law of Similars (market reserve) to software.

On procedural reforms, Brazil has tried to implement some mechanisms to improve the administration of the informatics law. It established an ad hoc group to review specific company complaints, will promulgate some administrative reforms, and has limited some of the imports covered by market reserve, subject to periodic revision.

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2

OPTIONS FOR EPC RECOMMENDATIONS TO THE PRESIDENT

Option 1: Terminate the Section 301 proceeding, despite the President's determination that the informatics policy is unreasonable and a burden or restriction on U.S. commerce, largely because of Brazil's precarious debt situation.

Pros of Option 1

- o Avoids violation of standstill and rollback.
- o Removes major irritant in U.S.-Brazil relations.
- o Avoids possible counter-retaliation.

Cons of Option 1

- o Makes Administration look weak and ineffective in self-initiated case.
- o Increases likelihood of legislated constraints on President's discretion under Section 301.
- o Invites criticism from U.S. industry.
- o Other countries may adopt informatics policies similar to Brazil's.

Option 2: Retaliate in full against Brazil to compensate for the lost sales and investment opportunities to U.S. firms as a result of its informatics policy.

[Pros and cons of Options 2 are the converse of those noted under Option 1.]

Option 3: Adopt some or all of the following:

A. Procedural Reforms

Suspend the "procedural reforms" part of the Section 301 case and monitor Brazil's implementation of those reforms. This would signal our appreciation of these favorable developments, but enable us easily to resume action under Section 301 if implementation proves inadequate.

B. Investment and Computer Software

Publicly delay action on investment and intellectual property portions of the Section 301 case for up to six months, to give

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President Sarney more time to resolve our concerns satisfactorily; but privately tell Sarney in a letter that the President has no choice but to retaliate in full no later than July 1 unless Brazil meets our concerns adequately. We would discreetly advise key U.S. industry and Hill officials of the private letter, so they would appreciate that we will not be soft on their main concern, adequate protection for our computer software. By getting tough with Sarney privately rather than publicly, we would aim to increase his flexibility and avoid any nationalistic backlash in Brazil.

C. GATT Case

Request consultations with Brazil in the GATT under Article XXIII:1 regarding GATT issues in the Section 301 case, and proceed to dispute settlement (including establishment of a panel), if appropriate. The aim of consultations would be to force Brazil to explain and defend certain egregious barriers to trade, such as the market reserve and law of similars. The consultations could focus on either: (1) generic Brazilian trade measures, such as the law of similars; or (2) the impact of such measures only on a particular sector, such as informatics. (A brief legal analysis of the GATT implications of the law of similars is attached at Tab 2.) Following consultations, we would assess whether to initiate formal GATT dispute settlement proceedings under Article XXIII:2.

D. Restrict Access to U.S. Market for Brazilian Informatics Exports

Announce that we will not allow products under the informatics market reserve to be exported to the U.S. One purpose of Brazil's market reserve for informatics is to exclude U.S. competition in Brazil against Brazilian manufactured informatics products. We could announce that we will not allow Brazil to export to the U.S. those products protected by market reserve, at least until such time as Brazil statutorily eases its market reserve practices. We could implement this option with minimum impact on current trade flows and in a way arguably consistent with GATT obligations, as follows. First, we would identify appropriate current and potential Brazilian informatics exports to the U.S. Second, we would notify them to the GATT under Article XVIII (as the President authorized us to do in October). Third, we would actually restrict imports from Brazil at an appropriate time.

This option would allow us to take a tough public posture at home, while minimizing the impact on current trade flows. (Current informatics exports from Brazil total about \$60 million, most of which is intra-company trade.) By selecting the products for action carefully, we could also minimize the potential impact on intra-company trade of U.S. companies.

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4

Pros of Option 3

- o Pressures Brazil for additional concessions, without jeopardizing concessions already offered.
- o If handled adroitly, may increase credibility with U.S. industry and U.S. Congress.
- o GATT case would be consistent with standstill and rollback commitment.

Cons of Option 3

- o If letter to President Sarney is leaked, could risk existing and additional concessions, or counter-retaliation.
- o Delay may still be perceived by U.S. industry and Congress as weak response.
- o U.S. risks losing GATT case, given weakness of Article XVIII balance-of-payments provisions and probable support of Brazil by other LDCs.

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